

HONORABLE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

DEBORAH LEPINE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

PETSMART, INC, a Delaware Corporation,

Defendant.

Case No.: 3:17-cv-05488-BHS

**PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF THE SECOND
DISTRIBUTION PURSUANT TO
CLASS ACTION SETTLEMENT
AGREEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

NOTE ON MOTION CALENDAR:
February 25, 2019

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Deborah Lepine (“Plaintiff”) respectfully moves the
3 Court for final approval of a second distribution totaling \$125,000 pursuant to the Class Action
4 Settlement Agreement (“Settlement Agreement” or “SA”) finally approved by this Court on
5 October 10, 2018 (“Initial Final Approval Order”). Dkt. 39. In granting preliminary approval of
6 the second notice and distribution on December 4, 2018, the Court preliminarily found that the
7 additional settlement payment of \$125,000 was fair and reasonable in that it will compensate the
8 70 newly identified Class Members at the same per-week amount as the original group of 424
9 Class Members. Dkt. 43.

10 Now that the additional 70 Class Members have received adequate notice of the
11 Settlement terms and had the opportunity to participate, object, or opt out, the Court should grant
12 final approval of the secondary distribution. First, **no additional Class Member has objected or**
13 **opted out.** Second, the additional 70 Class Members will be compensated at the same per-week
14 amount as the initial group of Class Members. Third, the Settlement itself remains fair and
15 reasonable for the reasons stated by this Court in its Initial Final Approval Order. Because the
16 Court has already ruled that the Settlement is fair, reasonable, and adequate, the Court should
17 grant final approval of the second distribution.
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19 **A. The Court Finally Approved the Settlement.**

20 On October 10, 2018, the Court issued the Initial Final Approval Order certifying the
21 Settlement Class. Dkt 39. The Court found that proper notice had been provided to the class
22 members; and that the Settlement was the product of good faith, arm’s-length negotiations
23 between the parties, was consistent with public policy, and fully complied with all applicable
24 provisions of law. Id. Although dismissing the action with prejudice, the Court retained
25 “exclusive and continuing jurisdiction over the case for purposes of supervising, implementing,
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1 interpreting and enforcing this Order and the Settlement Agreement, as may become necessary,
 2 until all of the terms of the Settlement Agreement have been fully carried out.” Id.

3 **B. The Court Preliminarily Approved the Secondary Notice and Distribution**

4 After final approval of the Settlement in this case, PetSmart informed Class Counsel that
 5 that it had inadvertently excluded 70 individuals from the initial class list provided to the
 6 Settlement Administrator. Dkt. 40. The parties agreed to send a second notice to the newly
 7 identified Class Members, subject to Court approval, informing them of the nature of the lawsuit
 8 and the Settlement Agreement, their anticipated individualized Settlement payment amounts, and
 9 their right to object or opt out of the settlement. Id. The parties agreed that the value of each
 10 additional Class Members’ work week should be the same as the per-week amount paid to the
 11 original Class Members that was finally approved by the Court. Id. Accordingly, on November
 12 30, 2018, the parties moved the Court for preliminary approval of Secondary Notice and
 13 Distribution Pursuant to the Class Action Settlement, which the Court granted on December 4,
 14 2018. Dkt. 43.

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 16 In its Order, the Court, among other things, approved distribution of a second notice to
 17 the 70 additional class members who were identified after the Court’s final approval of the
 18 Settlement, and scheduled the final approval hearing for February 25, 2019. Id. The Court
 19 preliminarily approved the additional settlement payment; and preliminarily determined that the
 20 additional payment amount is fair and reasonable in that it will compensate the additional class
 21 members at the same per-week amount as the initial group of Class Members. Id. Accordingly,
 22 the Court, on a preliminary basis, found that the \$125,000 additional settlement payment, and
 23 requested attorneys’ fees and costs and settlement administration costs, appeared to be fair and
 24 reasonable to all additional Class Members. Id.

25 Nothing that has occurred during the process of sending the second notice to the
 26 additional Class Members and receiving their responses to the secondary notice calls the Court’s
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prior findings into question.

II. THE NOTICE PROCESS HAS BEEN SUCCESSFULLY COMPLETED

A. Dissemination of Notice Packets

In compliance with the Court's order granting the parties' Stipulated Motion for Second Notice And Distribution, on December 28, 2018 the Settlement Administrator mailed the court-approved second Notice to 70 additional Class Members. Declaration of Jeremiah Kincannon Regarding Second Notice and Settlement administration ("Kincannon Decl.") filed herewith, at ¶ 9. The second Notice fairly and clearly described (i) that the Settlement Agreement has been approved and an initial distribution made; (ii) that the recipient was inadvertently omitted from the initial class notice, and he/she is therefore receiving the second notice, which provides the opportunity to receive a Settlement payment, opt out of the settlement, or object to the second distribution, and (iii) that the Settlement payments will be calculated pursuant to the same formula as the initial distribution and will result in an identical settlement payment on a per-week basis. *See Exhibit A* to the Kincannon Decl.

Of the 70 Notice packages mailed to Class Members, 7 were returned as undeliverable. Id. ¶ 10. The Settlement Administrator promptly performed skip-traces, and re-mailed Notices to updated addresses. Id. In the end, no Notice packets were undeliverable. Id.

B. No Objections and No Opt-outs

As with the initial Notice, the second Notice provided detailed instructions on how to opt-out or object, and provided a January 28, 2019 deadline to do so. *Exhibit A* to the Kincannon Decl. Not a single Class Member submitted an objection or opted out. Id. ¶¶ 11-12.

Accordingly, 100% of additional Class Members received a notice of the Settlement and 100% of the additional Class will participate in the Settlement.

1 **C. Groom Pay Challenges**

2 The Notice also provided detailed instructions on how Class Members could challenge
3 the number of weeks during which they were paid on Groom Pay. No Class Member disputed
4 their workweeks calculation. Kincannon Decl. at ¶ 13.

5 **III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SECOND**
6 **DISTRIBUTION**

7 The Court has already approved the Settlement as fair and reasonable. Dkt. 39. The
8 additional 70 class members are members of the Class that the Court certified for settlement
9 purposes. Id. The amount of the secondary distribution – \$125,000 – results in the newly
10 discovered class members receiving an identical payment on a per-week basis as the initial Class
11 Members. Kincannon Decl. at ¶ 14.

12 Specifically, for the Class Members who have already received settlement payments, the
13 net settlement amount (*i.e.*, the Settlement Amount of \$700,000, less attorneys’ fees and costs,
14 settlement administration expenses, and class representative enhancement) was \$470,231.64.
15 Dkt. 36 at p. 4. The initial group of the Class Members worked 27,558 Groom Pay Periods,
16 meaning that the settlement payment per work-week for the initial group was \$17.06. *Id.* The
17 secondary distribution (*i.e.*, \$125,000, minus requested attorneys’ fees and costs and settlement
18 administration expenses) will be \$85,231.76. Kincannon Decl. ¶ 14. The additional Class
19 Members worked 4,996 work-weeks during the Class Period so the value of each Groom Pay
20 Period is the same \$17.06 received by the initial Class Members. Id.

21 Further, as with the initial distribution, no Class Member has filed an objection to the
22 Settlement or opted out. Kincannon Decl. at ¶¶ 11-12. Accordingly, 100% of the Class will
23 participate in, and receive a payment from, the Settlement. Such unanimity of approval is a
24 strong sign that the settlement terms are fair, reasonable and adequate. *Hanlon*, 150 F.3d at 1027
25 (“[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed
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in the class presents at least some objective positive commentary as to its fairness.”); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (presence of only one opt-out supports district court’s approval of settlement). The lack of any objections and exclusions indicates that the overwhelming majority of Class Members favor the secondary Settlement.

IV. CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court approve the second distribution.

Dated: February 11, 2019

Respectfully submitted,

HAMMONDLAW, P.C.

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